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SUPREME COURT, U.S.

No. 1048

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. .....

GEORGE J. COTTAGE,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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OPINION BELOW

The opinion of the Court of Appeals Sixth Circuit, is reported at ... F2 .... A copy of the opinion is printed as an appendix to this Petition, (pages 9-10, *infra*).

JURISDICTION

The opinion of the Court of Appeals was filed on December 30, 1965. Within the statutory period of twenty days, a petition for rehearing was filed on January 10, 1966, and a denial of said petition for rehearing was made on January 25, 1966. The jurisdiction of the Court is invoked under the rules of the Supreme Court.

QUESTIONS PRESENTED

Did the Court err in submitting the case to the jury on all three counts of the indictment, namely Theft in Interstate Commerce, (2) receiving goods stolen in Interstate Commerce, and (3) Conspiracy to steal goods in Interstate Commerce?

The District Court answered "No".

The Court of Appeals said that it didn't matter because Petitioner was convicted on all three counts and given the same sentence on all three counts, and held that the conviction on Count 3 was good and due to the same sentences, it did not have to pass on Counts 1 and 2.

CONSTITUTIONAL PROVISION INVOLVED

The due process clause of the sixth and fourteenth Amendments of the United States of America.

STATEMENT OF THE CASE

On February 13, 1962, an indictment, consisting of three counts was returned by the Grand Jury at Detroit, Michigan, charging the petitioner (1) with the theft of a truckload of whiskey moving in interstate commerce; (2) the second count charged the petitioner with receiving a truckload of whiskey, and the third count charged petitioner and others with conspiracy to steal a truckload of whiskey in Interstate Commerce.

It was shown at the trial that the same whiskey was involved in all three counts.

The petitioner, George J. Cottage was found guilty on all three counts charged and reference is made to all three counts in the Judgment and Commitment. Motion for a new trial was made and denied in the District Court. Appeal was made and denied in the Court of Appeals and a petition for a rehearing was also denied.

REASONS FOR GRANTING WRIT

The decision of the Court of Appeals should be reviewed because it erroneously interprets the right of the petitioner under the Constitution in that he was entitled to a fair and impartial trial and verdict.

The Appellate Court stated that it did not have to and did not pass on the validity of petitioner's conviction on counts 1 (theft) and 2 (receiving) but that it was sufficient to only pass on count 3 (conspiracy to steal) because the sentences on all counts were the same length and concurrent and affirmed the conviction on the third count.